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Apartheid - The Legal Death of the Black Worker

Penelope Andrews



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APARTHEID

The Legal Death of the Black Worker

by Penelope Andrews

When Winnie Mandela refused to follow the South African government's edict that she not return to her home in Soweto, a new national leader emerged, and the issue of how apartheid policies affect the country's black population was once again brought to the public's attention.

Fearing that Mandela was becoming too popular among the black citizens, the white government banished the wife of jailed anti-apartheid leader Nelson Mandela to live in a remote, desolate village in the Orange Free State. She repeatedly defied the edict and returned to her home in Soweto, the gigantic black township outside Johannesburg.

Each time she was dragged by authorities from her Soweto home, her nonviolent tactics and the refusal of the South African courts to do any-

thing but release her without bail indicated that the stability of the community was at risk.

Winnie Mandela's successful defiance of government restrictions has not only given the black population of South Africa a new symbol of leadership, but has sent a message to the rest of the world that the situation in this tense country continues to deteriorate rapidly.

There are 29 million people living in South Africa today. Only the 4.5 million whites have full rights of citizenship, while the nation's 21 million blacks are treated as rightless foreigners.

Because these Africans are black, the color of their skin makes them non-citizens. They cannot vote, buy or sell land, live or work where they choose, or move freely. They have been stripped of power and deprived of control over their lives by an elaborate network of legislation and custom.

This is the apartheid system. But the rising tide of black opposition is threatening the survival of apartheid, and the possibility that the sys-

tem will be eventually dismantled is forcing a look at the nation's racist policies and their effect on the country's future.

Headlines around the world have examined the political awakening of blacks against apartheid, but have overlooked apartheid's effect on the nation's black landowners and labor force.

The operation of the Black (Urban Areas) Consolidation Act of 1945 and other discriminatory legislation maintains an inseparable barrier between black and white workers, forcing blacks into manual, lower-paying labor (where jobs are available) and creating an abundant supply of cheap labor housed in the bantustans.

Under the Land Acts of 1913 and

"Official ideology reflects a desire to keep a minimum of black residents in cities, while requiring a large presence of blacks in those cities to keep industry and commerce serviced, and to maintain productivity." (Photos [and on previous page] by John F. Conn/Black Star.)

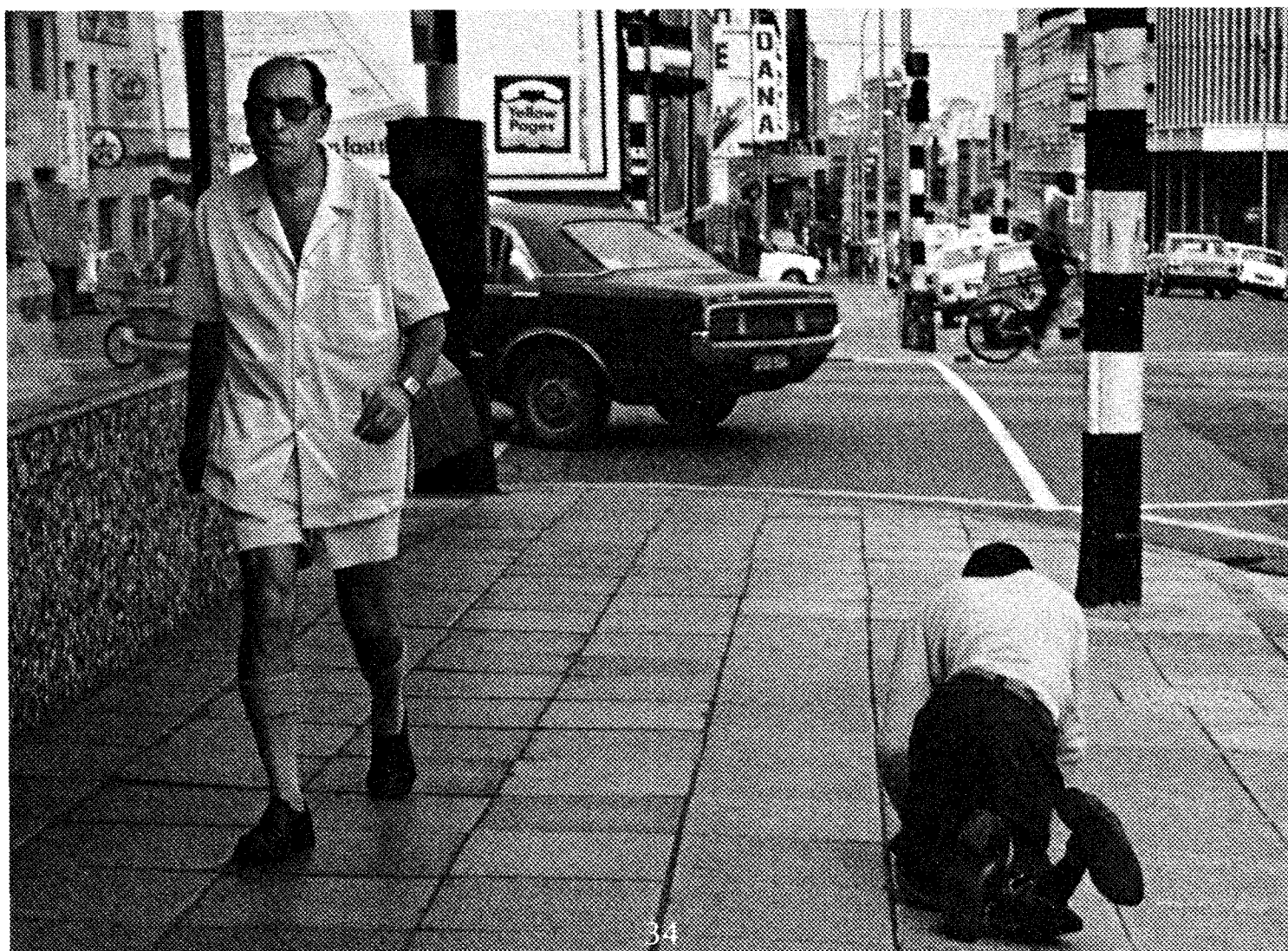
1936, the bulk of the country's land—86.5 percent—has been reserved for whites. Only 13.5 percent of the land can be owned by blacks.

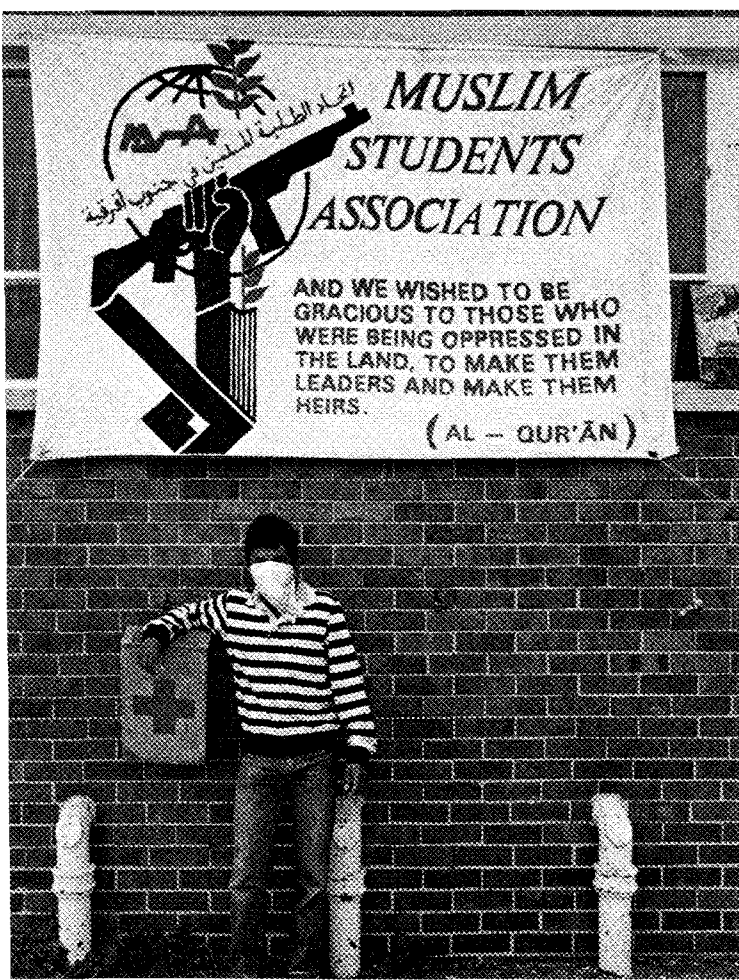
The bantustans are fragmented areas designated for blacks. As of 1983, fewer than 10 million blacks, or 46 percent of the population, lived in white areas while more than 11 million blacks lived in the bantustans.

Since 1960, the South African government has forcibly relocated at least one million blacks from white areas into the bantustans.

The individual bantustans in South Africa are Ciskei, Bophutatswana, Gazankulu, Ka Ngwane, Kwa Kdebele, Kwa Zulu, Lebowa, Qua Qua, Transkei and Venda. Black citizens of the Transkei, Bophutatswana, Venda and the Ciskei lost their South African citizenship when these territories became formally independent.

Citizenship in these territories depends on ethnic origin, birth in an "independent bantustan" and sometimes even such tenuous links







as cultural affinity or language.

In April 1984, the South Africa government passed the Aliens and Immigration Laws Amendment Act, which alters some of the laws covering these "foreigners." The amendments provide for a fine of R5,000 (\$3,500) or two years' imprisonment for anyone employing or harboring an "illegal alien" and a fine of R500 (\$350) for failing to produce, on demand, the necessary permit needed to enter South Africa. Since citizens of independent bantustans are deemed aliens, these provisions render movement to the cities virtually impossible.

Influx control is inextricably bound to the questions of citizenship and land-ownership. Shortly after the formation of the Union of South Africa in 1910, the Native Lands Act of 1913 was passed, setting aside 7 percent of the total land mass of South Africa for ownership and occupancy by the black population. That amount was increased to 13.5 percent with the passage of the Development Trust and Land Act of 1936.

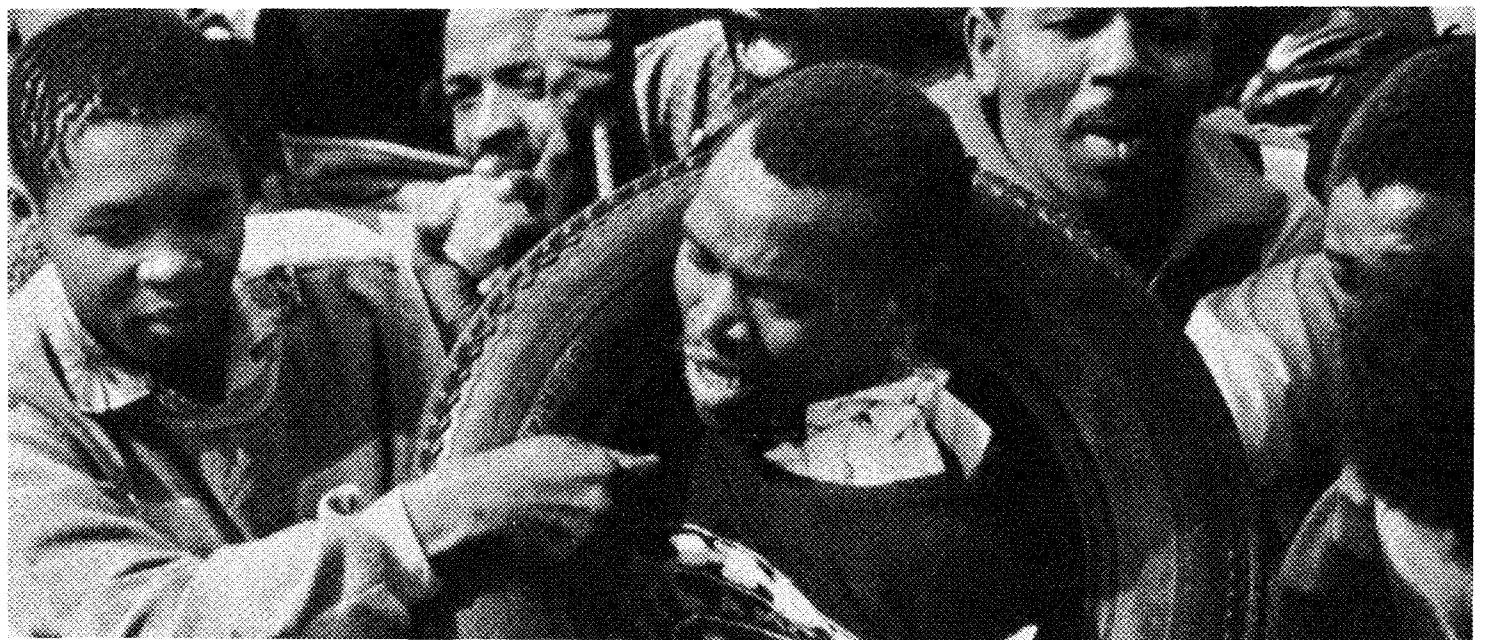
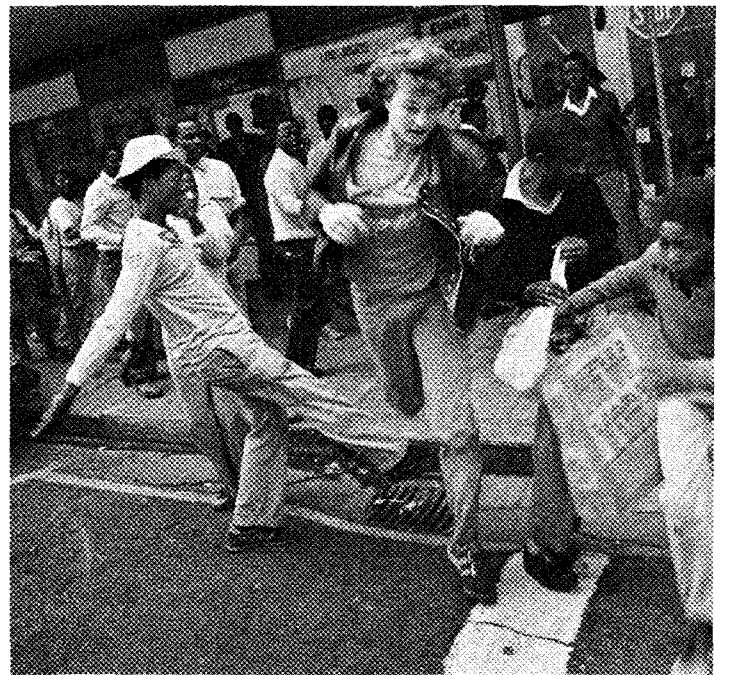
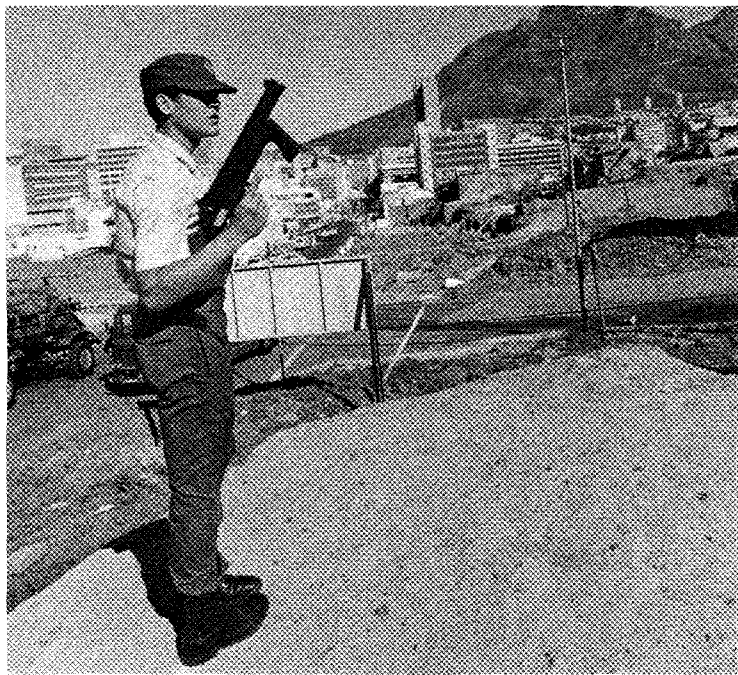
Blacks are not allowed to own land in the "white" areas of South Africa. Those areas generally comprise all the cities, most industrial and commercial complexes, farmlands, and the mining areas.

The 13.5 percent of the land allocated for black occupation comprise scattered fragments of land, designated as the "homelands" for the country's black population. With the exception of Bophutatswana, these bantustans lack exploitable minerals and offer poor prospects for agriculture.

The bantustan system is closely linked with the government's recent policy of forcibly removing settled black communities from the "white" areas of South Africa to remote regions of the bantustans. This mass-eviction forces families to try and eke out a living in a sparse and desolate wasteland. Those who believe that these communities have a chance of survival are hallucinating.

The forced displacement of blacks was not the invention of the present Nationalist government. Earlier

"It became imperative for (South African) business leaders to change the system after assessing the economic crisis and political strife, particularly black urban struggles in Soweto and other major metropolitan centers." (Photos by John F. Conn/Black Star and David Turnley/Detroit Free Press/Black Star [opposite page, top and bottom photos].)



administrations carried out mass removals under the guidelines of the 1913 Native Act. The Stallard Commission of 1923 enunciated the policy: "It should be a recognized principle that Native men, women and children should only be permitted within municipal areas in so far and for so long as their presence is demonstrated by the wants of the white population." With the advent of the Nationalist government to power in 1948, and particularly during the rigorous enforcement of legislation in the late 1950s and 1960s, removals were carried out in a more systematic manner.

The authority and machinery for black "relocation" was provided by an arsenal of legislation, including such laws as the Group Areas Acts of 1950 and 1957 and the Promotion of Bantu Self-Government Act of 1959. These laws have been rein-

forced by the Bantu Authorities Act of 1951, the Black Labor Act of 1964, the National States Constitution Act of 1971, and the Black Affairs Administration Act of 1971.

Combined, these have served to provide the pillar for the government's implementation and sustenance of apartheid ideology and practice and have relegated the majority of South Africans to living in impoverished and destitute dumping grounds.

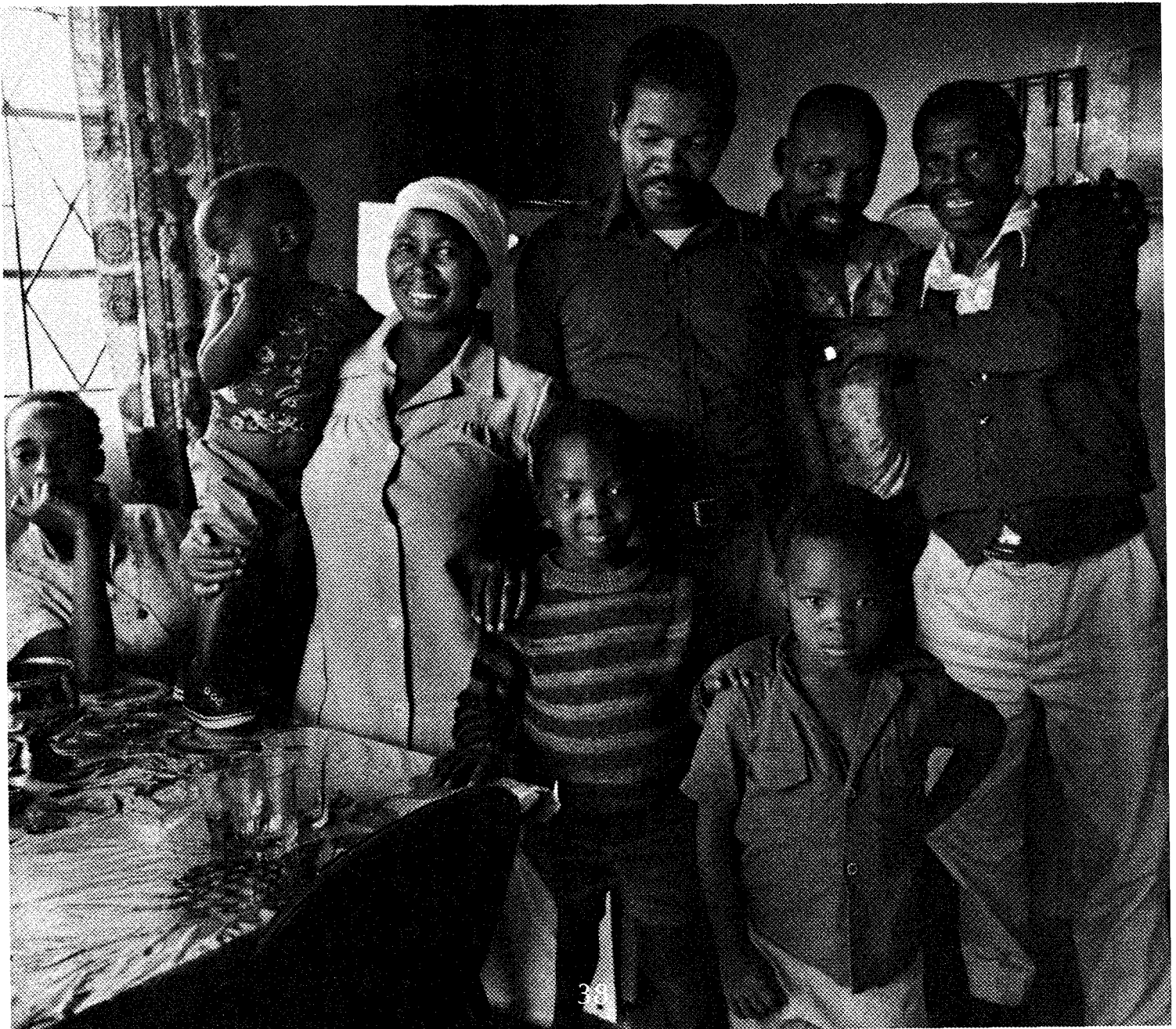
The right of blacks to be in the "white" areas is regulated by the influx control system which is embedded in the Black (Urban Areas) Consolidation Act of 1945. Control

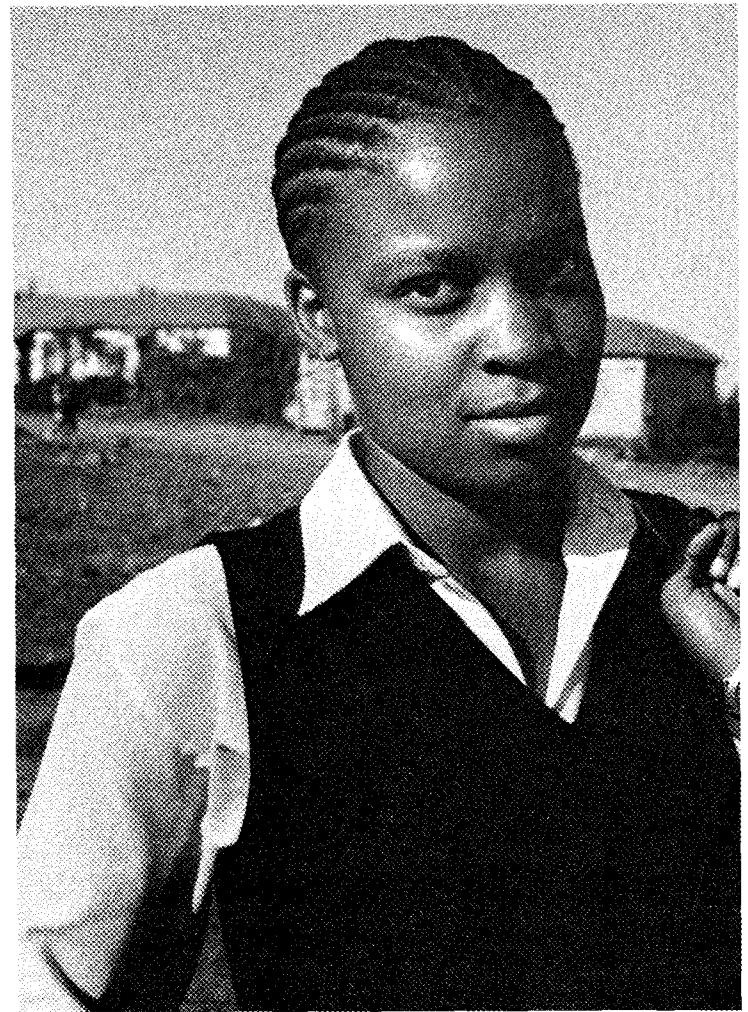
"The militancy and organization of black workers can be seen in the development and growth of the black and non-racial South African trade union movements."
(Photos by John F. Conn/Black Star.)

is exercised through Section 10 of the Act, which contains a general prohibition against blacks being in an urban area for longer than 72 hours.

In order to stay in a white area, blacks must meet certain qualifications under Section 10. They include proof of continuous residence since birth; continuous employment by the same employer for 10 years; being the wife or dependent child of one qualified due to continued residence or employment; or permission from the local labor bureau. Children sent by their parents to be cared for by relatives living in the bantustans have been known to lose their rights under the section because of the "continuous residence" requirement.

Blacks who remain in an urban area without authorization risk a fine of R100 (\$70) and/or three months





**The South African
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in "white" areas**

imprisonment for the "crime."

It is mandatory for all black South Africans over the age of 16 to carry a reference book ("pass") at all times. The pass contains a photograph, fingerprints, and other information serving to identify the holder. Without passes, blacks cannot work, obtain housing, register births, or obtain land ownership rights.

Citizens of neighboring states like Botswana, Swaziland, Mozambique, Lesotho and Malawi, who provide labor for the mines, have no legal right to live or work in South Africa. Their presence is dependent upon permission which may be granted or refused in an arbitrary manner. Once permission is granted, it can be withdrawn without any reason given.

Officers of the South African state vigorously guard against Section 10 offenses. In 1982, there were 206,022 blacks arrested for alleged contravention of Section 10 requirements. Raids are conducted regularly on men's hostels, where migrant laborers are housed, and on servants' quarters and places generally populated by black urban dwellers.

The position of the ruling white government in South Africa has always been contradictory regarding the presence of blacks in the "white" areas. The official ideology reflects a desire to keep a minimum number of black residents in the city, while requiring a large presence of blacks in the cities to keep industry and commerce serviced, and to maintain productivity at an optimum level.

The system of influx control serves a contradictory purpose. It controls the number of black people who come to the white areas so their numbers do not reach "unacceptable" levels, while it requires sufficient numbers in order to maintain a cheap and constant supply of labor to serve the needs of industry and commerce.

Various mechanisms have been utilized to exclude blacks from the "white areas" while developing administrative processes to channel the movement of labor to the cities.

At the same time, blacks have

achieved a small measure of acceptance within the trade union movement. In 1979, the Industrial Conciliation Act was amended to allow the incorporation of black and non-racial unions into the formal legal labor relations structures.

That incorporation seemed to be at odds with the requirements of the system for keeping blacks out of white areas. With the development of a fair and equitable employment system, black workers would begin to insist on an armory of rights which would differ starkly from the erosion of rights suffered in their homelands.

In fact, this conflict is particularly apparent in issues involving job security, where the country's industrial court has held that there is a right to security of employment. This right is grounded in the concept of an unfair labor practice and provides workers with a very real weapon to use against employers whose actions might result in not only loss of employment, but also the right to reside in "white" areas. The definition of an unfair labor practice includes prejudice to the "employment opportunities, work security, or physical, economic, moral or social welfare" of employees.

The dimensions of this apparent conflict in apartheid ideology and the very concrete problems it presents for tranquil labor relations is difficult to gauge. Rights gained in the workplace can only serve to undermine or erode the absence of those rights at home.

In the economic arena, South Africa has a number of allies whose citizens are largely democratic. Still, the nation does not subscribe to most of the principles embodied in the political structures of those democratic governments.

Black workers operate under legislation which is a denial of the rule of law traditionally understood and accepted in democratic countries. The legislation that exists serves primarily to protect the interests of white workers.

Therefore, the absence of a democratic political order in South Africa places an unusual emphasis on the establishment of a democratic

industrial system of labor relations. For example, the Black (Urban Areas) Consolidation Act of 1945 restricts the rights of black workers to live where they want, to move to areas where jobs might be more freely available, and relegates these workers to inadequate single-sex hostels. Negotiations are not simply about wages and conditions of employment, but they spill over into the place of the black worker in the wider South African society.

Circumstances have forced black workers to carve out a niche for themselves as a class, and this class has attempted to extract, despite great opposition from both management and the state, certain benefits which have been hard fought for and won in the international labor community.

In its embryonic state, the emerging independent trade union movement found itself in a hostile environment within the South African social, economic and political scenario. It found as its opposition a formidable alliance between the South African state and employers.

A combination of tactics like flatly refusing recognition of unions, to forcing majority unions to bargain at plant-level together with minority unions (a clear violation of the principle of major unionism), to employers using strikes as an opportunity to indulge in "union bashing" were utilized to slow down or jeopardize the growth of what was perceived as militant black trade unionism.

At Tidwell Industries, a United States firm, the steering committee members of an independent non-racial union were fired when they approached management for union recognition.

Two strikes in early 1984 exhibited the tendency toward union-bashing. At SA Fabrics at Rossburgh outside Durban, and at BMW at Rosslyn outside Pretoria, management threatened to dismiss workers who participated in the strike. BMW officials dropped anti-union pamphlets from a helicopter owned by the company. These activities on the part of management very often coincided with harassment on the part of the South African state. Examples

are abundant, including the 1982 death in detention of trade unionist Neil Aggett, and the detention of 21 trade unionists in 1981.

All kinds of pernicious strategies were adopted by the South African government to penalize the new unions. Unions have been charged with running "unregistered funeral societies" when they offered small funeral benefits. Union offices have been raided by security policemen and union officials have been charged with not possessing required work permits.

Some factories even had organizers arrested outside their premises, claiming they were "obstructing the pavement." In June 1980, the Minister of Health, Welfare and Pensions used Section 29 of the Fund Raising Act of 1980 to cut off the Federation of South African Trade Union's right to raise funds inside or outside the country.

However, despite these dismal beginnings, the independent trade union movement managed to weather the storm. By 1977, the South African government finally acknowledged that a powerful, cohesive independent trade union movement was to be inextricably linked to the industrial system and a commission was appointed to investigate South Africa's archaic and inadequate labor legislation.

This commission and its later recommendations represented a new era of "reform" on the part of the South African state. This attempt at reform of the racial division of labor and all its inequitable manifestations makes one significant point: it is not in the interest of the business class to maintain the division.

South Africa has experienced a severe shortage of skilled labor in the last two decades. This shortage is a direct spin-off from an inferior education system for blacks and white trade union regulations that prevent black workers from holding skilled jobs. This has been coupled with a slow growth of the white population.

Businesses in South Africa have therefore embarked on an energetic crusade to change this pattern and stave off, or significantly re-

(Please turn to page 50)

SOON

*Apartheid.
Most of us are not
Quite certain
Of how to pronounce it
Correctly.
Or what it means,
Exactly.*

*It is not quite slavery,
But it is not freedom.
One has some rights,
But is not treated
Quite human,
So they are not quite
Human rights.*

*It is outwardly,
Tenaciously, political;
A white minority desperately
Subjugating
A black majority.*

*Yet it is also
Deeply racial, inbred,
Of long history, and
Worse than slavery,
Because the taste is there,
Of freedom.
Almost, just out of reach,
Denied.*

*Leaving only the bitter hunger
Of frustration. Of civil war.
Of revolution.*

*Surely in our lifetime
It must end.
The injustice, the cruelty
Is too public,
Too transparent.*

Soon.

—Irving Karchimar

So why did you go into the law?

I was always interested, for some reason, in trial work. I can't say that I had some role model that I wanted to follow. But whenever I would be in a courtroom and watched trial lawyers, I was always interested.

Another reason, the broader reason, is that the law is involved with public policy and I'm interested in public policy.

Have you ever wanted to get into another line of work?

I'm glad to be practicing law with my father. Sometimes, that doesn't always work, but six weeks after I had passed the bar exam, my father walked into my office and gave me an armed robbery case that was up for trial in about four weeks.

I spent the next four weeks almost without sleep, interviewing witnesses, reviewing the law and doing all sorts of things.

By giving me that case and many others like it so early in my career, he gave me a chance to cut my teeth in a way that you wouldn't find in many kinds of law firms. I won that first case, too.

You believe that state authorized practice of law statutes should be re-

pealed and the practice treated like any other business, subject to the usual consumer protection. Isn't the law more complicated than other businesses?

Well, lawyers certainly like to think so.

When Charles Robb was governor of Virginia, he wanted to reduce, deregulate and open up some of the professions in Virginia. One of those who fought that were the hairdressers.

They said that their profession was of such specialization that if special protections for the business were taken away, the women of Virginia would go bald and the proper care of hair would never be done. That is patently silly.

Every profession thinks that their calling is special and unique. There certainly are complex areas of the law, but that's why specialists develop. There will continue to be the need for specialization. That isn't going to change by eliminating the unauthorized practice of law statutes.

How long do you plan to serve on the board of the Legal Services Corporation?

Frankly, I hadn't given it any spe-

cific thought. I have had particular offers that would involve me in time commitments, and make it difficult to spend the time that I do on legal services.

I have a three-year term, which is up in July, and I certainly will assess my situation then.

Where is this country moving in terms of service to the poor, the homeless?

I served on the Republican Party Platform Committee down in Dallas in 1984 and I think it is important for the Republican Party to develop a vision that speaks to all of America. If our message is not for the least of our brethren, then it's not a message at all.

For the longest time, the Republican Party was seen simply as a party of the country club, and not of the labor union hall or the inner city church, the inner city school or that small business man or woman.

Why are you singling out the Republican Party? Aren't Democrats interested in the same things?

You're right. We should all work together for that.

—Interviewed by Vicki Quade

Apartheid *(Continued from page 41)*

duce, the shortage of skilled labor.

E. Leistner of the South African Institute for Race Relations studied the problem in 1976 and reported these findings in a *Survey of Race Relations*: "A white monopoly of highly skilled and responsible posts in business administration...was no longer tenable," Leistner wrote. "Members of other racial groups would have to move up into such positions if economic growth rates were not to fall to ever lower levels.

Penelope Andrews, a South African attorney specializing in labor law, is a lecturer in the Department of Legal Studies, La Trobe University, Victoria, Australia.

Research has shown that within 15 years at least 500,000 white clerical jobs would be vacant unless other races were trained to fill work gaps vital for industrial expansion."

The imperative to modify the racist division of labor in South Africa did not result purely from an acknowledgement of the shortage of skilled labor. Rather, it became imperative for businesses to change the system after assessing the total picture of the prevailing economic crisis and political strife, particularly in the form of black urban struggles in Soweto and other major metropolitan centers.

The total scenario presented by this crisis has become more of a concern to the economy class because of reduced profits. Whereas

the '60s and early '70s were a boom era in South Africa, political turbulence has become a major factor in the diminished profitability which so pervades the economic arena.

After the political lull of the 1960s, a direct result of the South African government's banning of the most important resistance movements, its enforced exile and incarceration of popular leaders like Nelson Mandela, Walter Sisulu and Robert Sobukwe, among others, resistance against government policy reached unprecedented heights during the 1970s.

The wave of strikes commencing in 1973, followed by the mass uprising in 1976 and student protests in 1980 shook the steadfast foundations of apartheid ideology. This

combined industrial and political unrest caused consternation in the upper echelons of government and business.

The need to restore profit levels and alleviate the economic crisis has become entwined with the political aspirations of South Africa's disenfranchised majority black population. A compromise from the point of view of the business groups would have to coincide with the demands of the black population, particularly the working class. The militancy and organization of this class can be seen in the development and growth of the black and non-racial trade union movement, which should strengthen their working conditions. The risk of even greater economic and political inst-

ability which might result is very real for corporate interests.

The process of creating a significant and sizeable black middle class has been played out in many imaginative ways, not the least of which is the "constructive engagement" policy of the current U.S. administration.

The Reagan administration has in the past few years set aside millions of dollars for scholarships and training programs for black South African students in an attempt to not only provide them with educational skills, but to engender sympathy and support for U.S. corporate interests in South Africa. The American government also spent \$725,000 in 1984 on "labor education work" carried out by the AFL-CIO's Afri-

can-American Labor Center.

The need to restore the lush economic environment for the owners of capital in South Africa has also brought to the fore the ideological warfare occurring within its boundaries. In a nutshell, the political and economic crisis has shaken the ideological foundations of the free enterprise system in South Africa.

Relaxing legislation that bars blacks from holding skilled jobs and overtly racist barriers to the "upward social mobility" of a certain segment of the black population has a twin effect on the business community. It installs a black middle class sympathetic to the "values of the free enterprise system" while reducing the shortage of skilled labor. **hr**

Women in prison *(Continued from page 31)*

stitution is established next to a men's prison, whose resources it shares. The women's unit, though smaller, has its own library, classroom, and areas for visiting and recreation. Thus it can serve as a single-sex institution for women who elect against—or cannot handle—integration. Key to the success of the coordinate plan is appointment of a superintendent for the women's as well as the men's prison, preventing the former from becoming a mere satellite.

Some states may be able to adopt a modified form of the coordinate model without building a new institution. If the current women's prison is reasonably close to a men's unit, the plan can be implemented through busing.

Another answer is for local, state, and federal prison systems to pool resources for dealing with women. This would increase the number of institutions in which female prisoners might be confined, so that more women could be placed near their families. In addition, cooperative measures would enable women's institutions to specialize, providing prisoners with a greater range of programs.

Innovative architecture can also alleviate inequities. The benefits of

imaginative design can be seen in Vermont's Chittenden County Correctional Center, an institution that holds local and state prisoners of both sexes. Men and women are confined in separate units that are subdivided by security level, each with its own yard. All prisoners have direct access to central resources—cafeteria, library, and classrooms. Moreover, through sexual integration of the staff the institution has achieved flexibility in guard assignments. Women are always supervised by other women, but female officers can also be deployed throughout the institution.

None of these proposals addresses a problem even more fundamental than sex discrimination—the fact that incarceration is a cruel and expensive punishment inflicted mainly on the poor. Thus the best response to sex discrimination within prisons is to channel women into community corrections—restitution programs, halfway houses, special treatment centers. Although judges will probably continue to lock up the few convicted of serious crimes, they can be encouraged to sentence the many who are not dangerous to local facilities where women can support themselves, care for their children, and receive

better services. Greater use of community resources would also free funds to improve conditions for those left behind the walls.

Remedies, then, are available. Whether institutions will welcome them is another matter—prison bureaucrats have a remarkable capacity for footdragging. Yet it seems clear that even the most reluctant officials will have to turn to such solutions—or devise others—as female prisoners increasingly challenge sex discrimination in the years ahead. **hr**

IRR ANNUAL MEETING

The Section of Individual Rights and Responsibilities has scheduled an array of timely programs to be presented at the 1987 ABA Annual Meeting, Aug. 6-13 in San Francisco. Among the IRR-sponsored programs will be:

- "Reproductive Technology and the Law"
- "Religion and Politics—The Enduring Constitutional Question"
- "A Reconvened Constitutional Convention"

In addition to these special programs, The IRR Section Council will meet August 7 and Aug. 9.